

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**M.F., Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, RURAL  
DEVELOPMENT, San Juan, PR, Employer**

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**Docket No. 21-0878  
Issued: January 6, 2022**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 17, 2021 appellant filed a timely appeal from a December 1, 2020 nonmerit decision of the Office of Workers' Compensation Programs. As more than 180 days have elapsed from OWCP's last merit decision, dated October 7, 2020, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the December 1, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

## **FACTUAL HISTORY**

On August 10, 2020 appellant, then a 54-year-old loan technician, filed a notice of recurrence (Form CA-2a) alleging a recurrence of anxiety and severe depressive disorder due to reprisals from management related to her Equal Employment Opportunity (EEO) complaint. She specifically stated that, while at work on June 3, 2020, she suffered a panic attack because of an e-mail discrepancy pertaining to an EEO complaint against management and was subsequently hospitalized. Appellant noted that the date of the original injury was June 3, 2020 and the date of recurrence was June 15, 2020.<sup>3</sup>

Appellant was treated by Dr. Annette M. Barbosa Hernandez, a clinical psychologist, on August 19, 2020 who noted that appellant was hospitalized from June 3 through July 2, 2020 with symptoms of depression and anxiety that prevented her from working. In a separate report of even date, Dr. Hernandez noted treating appellant since 2015 for major depression due to her work environment. She reported that appellant had 12 psychiatric hospitalizations due to the exacerbation of her symptoms. Appellant reported being overworked, discriminated against, and ignored by her coworkers and supervisor. Dr. Hernandez opined that appellant was permanently disabled from work due to her emotional symptoms.

On August 20, 2020 appellant was treated by Dr. Angel E. Loyola Perez, a psychiatrist specializing in major depressive disorder, recurrent, severe with psychotic symptoms, panic attacks, and generalized anxiety disorder. Dr. Perez reported that appellant had a history of 12 psychiatric hospitalizations. She opined that the deterioration of appellant's emotional health was the result of stressors related to her work environment, including harassment by a coworker, discrimination, verbal and emotional aggression by her supervisor, and a hostile work environment.

OWCP received a certification of multiple hospital stays from November 8, 2012 through July 2, 2020.

Dr. Perez treated appellant on July 9, 2020 for major depressive disorder. She indicated that appellant's symptoms prevented her from working and recommended rest from July 9 through August 9, 2020.

On July 30, 2020 the employing establishment issued a non-disciplinary letter of instruction (LOI) due to appellant's absence from work since June 3, 2020 for an ongoing medical

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<sup>3</sup> The Board notes that appellant initially filed the Form CA-2a claiming a recurrence of her emotional condition claim under OWCP File No. xxxxxx396. However, OWCP developed this claim as an occupational disease claim and assigned File No. xxxxxx250. Appellant's claims have not been administratively combined.

condition. It indicated that the medical documentation submitted in support of her claim was administratively unacceptable and provided her 15 days to submit appropriate documentation.

On August 5, 2020 appellant responded to the LOI and disputed the determination that her medical documentation was insufficient. She asserted that her supervisor was creating obstacles and improperly speculating about the validity of her doctors' medical excuses in further retaliation for her filing an EEO complaint.

In a development letter dated September 3, 2020, OWCP advised appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence needed and provided a questionnaire for her completion. By separate development letter of the same date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

In response to OWCP's development letter, appellant submitted two statements dated August 21 and October 3, 2020 referencing psychiatrist and psychologist reports and requesting additional time to respond to OWCP's questionnaire.

By decision dated October 7, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the implicated employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In an appeal request form dated and received *via* OWCP's Employees' Compensation Operations & Management Portal (ECOMP) on November 7, 2020, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated December 1, 2020, OWCP denied appellant's request for a review of the written record as untimely filed, finding that her request was not made within 30 days of the October 7, 2020 OWCP decision as it was dated and received *via* ECOMP on November 7, 2020. It further exercised its discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration, along with the submission of new evidence.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."<sup>4</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>5</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by

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<sup>4</sup> *Supra* note 1 at § 8124(b)(1).

<sup>5</sup> 20 C.F.R. §§ 10.616, 10.617.

postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>6</sup> Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for a review of the written record before an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124.

OWCP's regulations provide that the request for a hearing or review of the written record must be made within 30 days of the date of the decision for which a review is sought. Because appellant's request for a review of the written record was dated and received on November 7, 2020, it postdated OWCP's October 7, 2020 decision by more than 30 days and, therefore, is untimely. Appellant was, therefore, not entitled to a review of the written record as a matter of right.<sup>8</sup>

OWCP, however, has the discretionary authority to grant the request and it must exercise such discretion.<sup>9</sup> The Board finds that, in the December 1, 2020 decision, OWCP properly exercised its discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration, along with the submission of additional evidence.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from established facts.<sup>10</sup> The Board finds that the evidence of record does not indicate that OWCP abused its discretion in connection with its denial of appellant's request for a review of the written record.

Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed, pursuant to 5 U.S.C. § 8124(b).

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>6</sup> *Id.* at § 10.616(a).

<sup>7</sup> *W.H.*, Docket No. 20-0562 (issued August 6, 2020); *P.C.*, Docket No. 19-1003 (issued December 4, 2019); *M.G.*, Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>8</sup> *See P.C.*, Docket No. 19-1003 (issued December 4, 2019).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.<sup>11</sup>

Issued: January 6, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> Upon return of the case record, OWCP should consider administratively combining appellant's emotional condition claims, OWCP File Nos. xxxxxx396 and xxxxxx250.